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Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION**

ROSE DMYTRYK

Plaintiff,

v.

KOHL'S INC.
N56 W17000 Ridgewood Drive
Menomonee Falls, WI 53051

and

KOHL'S DEPARTMENT STORES,
INC.
N56 W17000 Ridgewood Drive
Menomonee Falls, WI 53051

Defendants.

Case No.

**COMPLAINT
DEMAND FOR JURY TRIAL**

Judge

NOW COMES Plaintiff, Rose Dmytryk, by and through her attorney, Michael L. Fradin, Esq., and complaining of Defendants, Kohl's, Inc. and Kohl's Department Stores, Inc. (Collectively "Kohl's"), Wisconsin corporations, states as follows:

1. This Court has jurisdiction of this matter based upon diversity of citizenship as contained in 28 United States Code §1332 in that the Plaintiff, Rose Dmytryk, is a citizen of the State of Ohio and that the Defendant, Kohl's, is incorporated in the State of Wisconsin, and its

principal place of business is N56 W17000 Ridgewood Drive, Menomonee Falls, Wisconsin 53051, and thus is a resident and citizen of the State of Wisconsin. The matter in controversy, exclusive of interest and costs, exceeds \$75,000.00.

2. That on or about December 12, 2018, the Plaintiff, Rose Dmytryk, resided at 1265 Firwood Road, Broadview Heights, Ohio 44147 and, thus, is a citizen and resident of Ohio.

3. That on or about December 12, 2018, the Defendant, Kohl's, a Wisconsin corporation, was operating at the commonly known address of 6860 Ridge Road, Parma, Ohio 44129.

4. That sometime prior thereto and on the aforementioned date and time the Defendant, Kohl's, a Wisconsin corporation, leased or owned the premises commonly known as 6860 Ridge Road, Parma, Ohio 44129.

5. That on or about December 12, 2018, the Defendant, Kohl's, a Wisconsin corporation, leased, owned, controlled, maintained and possessed said premises, specifically the building and interior space and shopping aisles located within the store, which is used by the Defendant and persons lawfully on their premises to shop, stand and walk upon at the Kohl's located at 6860 Ridge Road, Parma, Ohio 44129.

6. That on or about December 12, 2018, the Defendant, Kohl's, a Wisconsin corporation, owned, controlled, maintained and possessed said merchandise within the aforementioned building, of which is displayed on shelves and hangers, stored in boxes, and transported on carts located within the store at Kohl's, located at 6860 Ridge Road, Parma, Ohio 44129.

7. That on or about December 12, 2018, it was the duty of the Defendant, Kohl's, a Wisconsin corporation, having control of said premises as owners, occupiers or lessors of the premises to use ordinary care to keep the premises in a reasonably safe condition for the use

of those lawfully upon the premises.

8. That located upon the aforementioned property is a building and upon the interior of the building are aisles intended to be used by persons such as the Plaintiff for shopping while at Kohl's.

9. That on or about December 12, 2018, merchandise and/or products were moved through the store aisles from the storage room to the specific locations for display using carts and/or dollies operated by store employees.

10. That on or about December 12, 2018, Defendant Kohl's had a duty of care to keep all interior aisles clear from boxes and carts for the safe use of persons such as the Plaintiff while shopping at Kohl's.

11. That on or about December 12, 2018, the Defendant Kohl's, a Wisconsin corporation, through its employees, left boxes unattended in an aisle that Plaintiff was walking down.

12. That on or about December 12, 2018, the Defendant Kohl's, a Wisconsin corporation, through its employees, left a cart unattended in an aisle that Plaintiff was walking down.

13. That on or about December 12, 2018, Plaintiff, Rose Dmytryk, as a business invitee of the Defendant, Kohl's, a Wisconsin corporation, was legally on the premises when she tripped over a box left unattended in the aisle and attempted to catch herself on a nearby wheeled product cart for stability. However, the product cart was not locked in place and Plaintiff fell.

14. That on or about December 12, 2018, the Defendant, Kohl's, a Wisconsin corporation, was guilty of one or more of the following negligent acts and/or omissions, which were committed by its agent, servant and/or employee;

- a. Failed to instruct employees on the proper and safe protocol to keep aisles clear of clutter, boxes, and trip hazards, thereby creating unreasonable danger to persons lawfully on the premises;
- b. Failed to instruct employees on the proper operation, use, and storage of carts, thereby creating an unreasonable danger to persons lawfully on the premises;
- c. Failed to warn the Plaintiff of the unreasonably dangerous condition existing on the premises when they knew, or in the exercise of reasonable care should have known, that persons like the Plaintiff would be walking down the aisles, thereby creating unreasonable danger to persons lawfully on the premises;
- d. Allowed an area of the premises to be and remain in a dangerous condition where it was reasonably foreseeable that persons such as the Plaintiff would walk down an aisle where the employees had left unattended boxes and a wheeled cart;
- e. Failed to put signs or placards warning business visitors, including the Plaintiff, of the dangerous condition;
- f. Failed to otherwise exercise due care with respect to the matters alleged in this complaint.

15. By reason of one or more of the foregoing negligent acts or omissions to act on the part of the Defendant, Kohl's, a Wisconsin corporation, the Plaintiff, Rose Dmytryk, was injured while she was legally on the premises when she tripped over a box left unattended in the aisle, and attempting to catch herself on a nearby wheeled product cart for stability, only to find that it was not locked in place, causing her to fall.

16. That by reason of the aforesaid negligence of the Defendant, Kohl's, a Wisconsin corporation, and as a direct and proximate result thereof the Plaintiff, Rose Dmytryk, sustained severe and permanent bodily injuries, both externally and internally, was compelled to and will be compelled to expend and become liable for large sums of money for medical services in and about endeavoring to become healed and cured of her injuries, has suffered pain in the past and suffers pain at the present time and will suffer pain in the future, and has suffered injury to her capacity to earn money in the past and will continue to have injury to his capacity to earn money in the future.

WHEREFORE, the Plaintiff, Rose Dmytryk, by and through her attorney, Michael L. Fradin, Esq., prays for judgment against the Defendants, Kohl's, Inc. and Kohl's Department Stores, Inc., in an amount in excess of \$75,000.00 plus costs of suit.

COUNT II

Res Ipsa Loguitur

NOW COMES Plaintiff, Rose Dmytryk, by and through her attorney, Michael L. Fradin, Esq., and complaining of the Defendant, Kohl's, a Wisconsin corporation, states as follows:

17. . The Plaintiff, Rose Dmytryk, restates and incorporates by reference paragraphs 1 through 16 of Count I herein as and for paragraph 17 of Count II.

18. That on December 12, 2018, and for some time prior thereto, Kohl's, a Wisconsin corporation, had the exclusive and sole control of the premises commonly known as 6860 Ridge Road, Parma, Ohio 44129.

19. That on December 12, 2018, the Defendant, Kohl's, a Wisconsin corporation, had the exclusive and sole control of the aforementioned floor and aisle area.

20. That on December 12, 2018, the Defendant, Kohl's, a Wisconsin corporation, had the exclusive and sole control of the aforementioned carts and boxes in the aforementioned floor

and aisle area.

21. That the occurrence speaks for itself; that is the occurrence would not have taken place in the ordinary course of things if the Defendant had not negligently failed to use proper care in maintaining, locating, inspecting and stocking merchandise and making sure it was reasonably safe for persons such as the Plaintiff to be walking in the aforementioned floor and aisle area.

22. That by reason of the aforesaid negligence of the Defendant the Plaintiff, Rose Dmytryk, was severely injured walking in an aisle at Kohl's located at 6860 Ridge Road, Parma, Ohio 44129, when she tripped over a box left unattended in the aisle, and attempting to catch herself on a nearby wheeled product cart for stability, only when finding that it was not locked in place, fell to her hands and knees.

23. That by reason of the aforesaid negligence of the Defendant, Kohl's, a Wisconsin corporation, and as a direct and proximate result thereof the Plaintiff, Rose Dmytryk, sustained severe and permanent bodily injuries, both externally and internally, was compelled to and will be compelled to expend and become liable for large sums of money for medical services in and about endeavoring to become healed and cured of her injuries, has suffered pain in the past and suffers pain at the present time and will suffer pain in the future, and has suffered injury to her capacity to earn money in the past and will continue to have injury to her capacity to earn money in the future.

WHEREFORE, the Plaintiff, Rose Dmytryk, by and through her attorney, Michael L. Fradin, Esq., prays for judgment against the Defendants, Kohl's, Inc. and Kohl's Department Stores, Inc., in an amount in excess of \$75,000.00 plus costs of suit.

Respectfully submitted,

S/Michael L. Fradin
Attorney for Plaintiff

Michael L. Fradin, Attorney at Law
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Athens, Ohio 45701
847-644-3425 (phone)
847-673-1228 (fax)

JURY DEMAND

Now comes Plaintiff and demands a trial by a jury of eight (8) on all issues of the within cause.

S/Michael L. Fradin
Michael L. Fradin (0091739)
Michael L. Fradin, Attorney at Law